UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CASE NO. 1:06-CV-02658-WMN

US District Court for the
Southern District of Florida
West Palm Beach Division

Case No. 05-80387-CIV-RYSKAMP/VITUNAC

STEVEN A. SILVERS, an individual,

Plaintiff,

v.

GOOGLE INC., a Delaware corporation,

Defendant.
______________________________________/

GOOGLE INC., a Delaware corporation,

Counterclaimant,

v.

STEVEN A. SILVERS, an individual; STELOR PRODUCTIONS, INC., a Delaware Corporation; STELOR PRODUCTIONS, LLC, a Delaware limited liability company, and STEVEN ESRIG, an individual,

Counterdefendants.
______________________________________/

STELOR PRODUCTIONS, LLC'S REPLY TO MILLER'S RESPONSE TO STELOR'S MOTION TO COMPEL COMPLIANCE WITH SUBPOENA AND COURT ORDER

Stelor Productions, LLC ("Stelor"), by and through undersigned counsel, hereby replies as follows to Miller's Response to Stelor's Motion to Compel:

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INTRODUCTION

Miller stubbornly persists in her refusal to appear for deposition as ordered by this Court. She relies on a set of flawed "technical" arguments, but still offers no legitimate excuse whatsoever for her refusal to appear for Deposition on December 19, 2006.

Nor does Ms. Miller offer any reasonable alternative date. In fact, as of the filing of this Reply, Ms. Miller's counsel has failed to make any effort whatsoever to meet and confer with counsel for Stelor to attempt to resolve whatever issues Ms. Miller and her counsel believe exist related to this deposition.

Ms. Miller and her counsel are engaging in a deliberate and unfounded effort to avoid a court-ordered deposition, and are needlessly multiplying the proceedings before this Court. Ms. Miller should be ordered to appear for deposition on a date certain, and sanctions should be assessed against them.

ARGUMENT

The issues raised by Ms. Miller in her response – addressed in turn below – are entirely unfounded.

Point 1: **Stelor's Alleged Failure to Communicate with Ms. Miller's Counsel to Reschedule the Deposition Pursuant to the Court's Order.**

Ms. Miller's Reply wrongly suggests that she had no indication of Stelor's intent to depose her on December 19, 2006, until – essentially out of the blue – a notice was received via this Court's ECF system on December 11, 2006. That is wrong.

On December 1, 2006 – just two days after issuance of this Court's November 29, 2006 Order – Stelor served by fax a notice of deposition on Ms. Miller in the Maryland State case. A

BURLINGTON · SCHWIEP · KAPLAN & BLONSKY, P.A.
OFFICE IN THE GROVE PENTHOUSE 2699 SOUTH BAYSHORE DRIVE MIAMI, FLORIDA 33133
T: 305.858.2900 F: 305.858.5261
EMAIL: INFO@BSKBLAW.COM WWW.BSKBLAW.COM

copy of the Notice was included as Exhibit "A" to Stelor's Motion to Compel (DE # 11-2, at 2). A parallel notice was served in the Florida action on December 1, 2006. (DE # 11-2, at 7).

In addition, Counsel for Stelor was in communication even before service of either notice with Mr. Silvers' Florida counsel (DE # 11-2, at 35-38). Mr. Silvers, of course, is also represented by Mr. Worsham in Maryland.

Clearly, therefore, Ms. Miller and her counsel were "on notice" of Stelor's intent to take her deposition on December 29, 2006.[1] They have no basis whatsoever for complaining about any alleged lack of notice to them. That argument is an illegitimate pretense for avoiding a deposition they are required to attend. This is made clear, moreover, by their refusal even to suggest an alternative date.

Point 2: **Ms. Miller's Counsel Still Has Not Conferred In Good Faith to Resolve These Issues**

As catalogued in Stelor's Motion and the attached exhibits, Ms. Miller's counsel has failed to confer in good faith to attempt to resolve any issues related to Ms. Miller's deposition. That remains the case.

Following the filing of Stelor's Motion on Friday, December 15, 2006, counsel for Stelor once again emailed counsel for Miller requesting a meet and confer. First thing Monday morning, December 18, 2006, undersigned counsel called Mr. Worsham and left a voice mail requesting a return call to discuss the deposition. Undersigned counsel called again at around noon, and sent a follow up email. *See* Exhibit "A" hereto.

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[1] In fact, it was counsel for Ms. Miller who unreasonably delayed taking any action in response to that notice. Thus, he waited until December 11, 2006, to serve a motion for protective order in response to the State Court Notice. Nor did he make any effort to pick up the phone and call Stelor's counsel prior to filing that motion – let alone at any time thereafter.

BURLINGTON · SCHWIEP · KAPLAN & BLONSKY, P.A.

OFFICE IN THE GROVE PENTHOUSE 2699 SOUTH BAYSHORE DRIVE MIAMI, FLORIDA 33133
T: 305.858.2900 F: 305.858.5261
EMAIL: INFO@BSKBLAW.COM WWW.BSKBLAW.COM

As of the filing of this Reply, however, Mr. Worsham has not even given the courtesy of a return call. Notwithstanding Mr. Worsham's allegations that the Court's Local Rules are being violated – and they are not – it is Mr. Worsham who is acting in persistent disregard of his obligations to meet and confer pursuant to Local Rule 104.7 & 104.8(b).

Point 3: **Alleged Violations of the Local Rules**

As explained above, it is Mr. Worsham's refusal to meet and confer that violates the Local Rules. Stelor filed with this court a copy of the Notice of Deposition served on the parties to the Florida action, because given this Court's November 29, 2006 Order, the filing appeared warranted pursuant to LR 104.5. In any event, Ms. Miller's argument that the filing was not proper under the rules hardly justifies a refusal to appear for the deposition!

Ms. Miller also misreads Local Rule 101, insofar as he suggests that Stelor's Florida counsel could not properly take Ms. Miller's deposition. In fact, LR 101.1(c) specifically provides that "[i]t shall not be necessary for counsel to be admitted to the Bar of this Court in order to obtain a subpoena for depositions to be taken in this District for cases pending in other Districts." Stelor, nevertheless, has taken the additional steps of retaining Maryland counsel and ensuring that undersigned counsel has formally moved to appear *pro hac vice.*

Point 4: **The Issues Related to the Maryland Case Are for the Maryland Court to Decide.**

Ms. Miler's remaining arguments based on the pendency of a Maryland state court action were already raised by her and rejected by this Court. Thus, in the November 29, 2006 Memorandum, this Court held that those issues are "for the Circuit Court of Montgomery County

BURLINGTON · SCHWIEP · KAPLAN & BLONSKY, P.A.
OFFICE IN THE GROVE PENTHOUSE 2699 SOUTH BAYSHORE DRIVE MIAMI, FLORIDA 33133
T: 305.858.2900 F: 305.858.5261
EMAIL: INFO@BSKBLAW.COM WWW.BSKBLAW.COM

to decide and ha[ve] no bearing on the legitimacy of the instant subpoena." (DE # 8, at 5 n.2). That holding still squarely applies.

CONCLUSION

The question arises: why is Ms. Miller still trying to avoid appearing for this deposition? There is no good answer. Certainly, there is no legitimate reason for her and her counsel's ongoing refusal to comply with this Court's Order. If the December 19th date was problematic, all they needed to do was propose a reasonable alternative date. That would likely have required a single phone call, but certainly nowhere near the volume of papers and attorney time incurred in the last ten days.

The bottom line is that Miller and her counsel continue to multiply these proceedings without any legitimate basis to avoid appearing for deposition. That should not be tolerated. The deposition should be compelled, and sanctions should be assessed.

Respectfully submitted,

BURLINGTON, SCHWIEP,
KAPLAN & BLONSKY, P.A.
Counsel for STELOR PRODUCTIONS, LLC
Office in the Grove, Penthouse A
2699 South Bayshore Drive
Miami, Florida 33133
Tel: 305-858-2900
Fax: 305-858-5261
Email: kkaplan@bskblaw.com

s/ Kevin C. Kaplan
Kevin C. Kaplan

cc: S. Sturgeon, Jr., Esq.

CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2006, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/ Kevin C. Kaplan
Kevin C. Kaplan

SERVICE LIST

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UNITED STATES DISTRICT COURT, DISTRICT OF MARYLAND

Michael C. Worsham, Esq.
Counsel For Lindsey Miller
1916 Cosner Road
Forest Hill, Md. 21050
Tel: 410-557-6192
Michael@Worshamlaw.Com
SERVED VIA EMAIL AND US MAIL

BURLINGTON · SCHWIEP · KAPLAN & BLONSKY, P.A.
OFFICE IN THE GROVE PENTHOUSE 2699 SOUTH BAYSHORE DRIVE MIAMI, FLORIDA 33133
T: 305.858.2900 F: 305.858.5261
EMAIL: INFO@BSKBLAW.COM WWW.BSKBLAW.COM